

2003 WISCONSIN ACT 118 REPORT TO THE LEGISLATURE

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OVERVIEW

By March 1, 2005, the Department must submit three reports to the legislative standing committees with responsibilities for environmental matters. For the convenience of the standing committees the Department has consolidated the three reports into this single report. Submittal of these reports:

- State Implementation Plan (SIP)
- Emissions Monitoring Practices
- Permit Application Requirements

completes Department responsibilities under the nonstatutory provisions of 2003 Wisconsin Act 118, Section 231(2), (3) and (4).

The Department met its initial responsibility under these nonstatutory provisions by providing a report on the Department's air permit streamlining efforts in September 2004. That document, Report on Air Permit Streamlining Efforts, described the framework guiding the Department's Air Permit Improvement Initiative (APII). That framework envisions a fundamental shift from a predominantly individualized permitting process to a more standardized one, a shift toward more operational flexibility for facilities and a shift of Department and industry resources from processing permits to taking actions that achieve air quality benefits. Since the September 2004 report to the Wisconsin Legislature, the Department has made the following progress on air permit streamlining:

- Made substantial progress working with industry and others to design a new single air permit process (consolidated permit). This product will be ready for introduction as a bill this legislative session. A consolidated permit approach will improve existing practices for determining compliance with air pollution control requirements. This approach will also increase the efficiency of transactions between regulated facilities and the Department, while preserving opportunities for public review and comment.
- Developed policy recommendations to resolve emission-monitoring issues of high priority to regulated facilities.
- Defined the application requirements for registration permits.
- At its April 2005 meeting, the Natural Resources Board will consider adoption of the registration and general permit administrative rules. These rules will allow 75% of minor sources that previously would have needed a more time consuming individual permit process to use a streamlined approach that issues a permit in 15 days as compared to the current 120 days. The Department plans to use these kinds of permits as soon as the rules become effective (expected by September 2005).
- In May 2005 the Natural Resources Board will act on proposed administrative rule revisions to allow for simultaneous issuance of a new source review and operation permits.

In addition, at a November 2004 hearing, the Legislative Audit Committee expressed their satisfaction with the progress the Department's Air Management Program had made at addressing Legislative Audit Bureau recommendations contained in that Bureau's February 2004 report. The Committee specifically identified progress made in addressing report recommendations and encouraged the Air Management Program to continue making progress on air permit streamlining.

It is also worth noting that the Air Management Program has successfully eliminated the remaining 148 Federal Operation Permits (Title V) that were identified for completion at the start of 2004. To complete this effort, a highly concentrated and coordinated statewide approach was used. As a result, Wisconsin went from worst to first in regard to Title V permit issuance percentages of states in Region 5 of the



United States Environmental Protection Agency (EPA). This accomplishment is a real testament to the dedication, professionalism and perseverance of Air Management Program staff.

Below is a brief summary of the findings and key recommendations for each of the three key components of this report. Recommendations to address issues on emission monitoring practices and permit application requirements in this report reflect stakeholder discussions that have transpired as of February 18, 2005. Dialogue is continuing. The Department anticipates that report recommendations may be refined, and that additional improvements will be identified, evaluated and acted upon as the permit improvement efforts continue in the coming year.

State Implementation Plan - The Wisconsin State Implementation Plan (SIP) includes statutes, rules and policies that demonstrate to EPA our ability and commitment to implement the federal Clean Air Act. The SIP review process is the means by which the state gains EPA approval to carry out certain federal air quality responsibilities. Through our review of records we have determined that EPA has inadvertently approved some chapters of Wisconsin's air pollution control rules for inclusion in our federally approved SIP that are not required. This report identifies those chapters and a priority for moving forward to make changes to Wisconsin's federally approved SIP. Included in these inadvertent approvals are the state hazardous air pollutant control rule, Chapter NR 445, Wisconsin Administrative Code, and the state requirements on objectionable odors and open burning in Chapter NR 429, Wisconsin Administrative Code. The Department is currently discussing with EPA the options and best path forward to withdraw the unnecessary chapters from the federally approved SIP.

Wisconsin is not the only state with uncertainty over what rules are contained in their approved SIP. Many states are in a similar situation.

Emission Monitoring Practices - Actions to clarify and provide consistency on priority issues identified by stakeholders are underway. Within six months, four priority areas will be addressed through the development of improved guidance for stack emission test methods, compliance calculations, control equipment operating measures and plan approvals for certain compliance activities. Other issues will require further evaluation in order to identify the best practices. It is likely that rule revisions will be necessary during the upcoming biennium to address a number of the remaining stakeholder issues.

Clear guidance and consistent implementation of requirements will be critical to assure stakeholder concerns on emission monitoring practices are fully addressed. In addition to guidance and rule revisions, the Air Management Program has established a management system that supports consistent application of program guidance and improved customer service.

Permit Application Requirements - Streamlined application forms and permit templates have been developed for the registration permit program that will be implemented this year which will greatly reduce costs and improve permit processing times for much of the regulated community. For those businesses that will still need to obtain a permit under the traditional approach the Department has initiated development of a consolidated permit system. As the Department develops that system it will examine permit application requirements and determine ways to decrease the level of detail required, to clearly define needs, and to develop improved procedures to streamline and reduce costs for this requirement.

Most importantly, in the Governor's proposed budget is a request for funds to support a greatly improved information technology system for the Air Management Program. If this proposal is included in the final budget, the Air Management Program will be able to provide significantly improved service to customers. This includes electronic permit application, creation of a notification system for businesses that need to file permit applications or renewals, and an upgrade of the data management system for the Air Management Program. Those changes would significantly reduce permit-processing time, improve the consistency of permitting decisions across the state, and increase facilities' knowledge of permit requirements and permit status.



Wisconsin's State Implementation Plan

Background

Section 110 of the Clean Air Act [42 USC 7410] (**Appendix A**) requires each state to adopt and submit to EPA "a plan which provides for implementation, maintenance and enforcement of [each national ambient air quality] standard in each air quality control region (or portions thereof) within each State". The federal Clean Air Act requires that specific components must be included in a state's implementation plan, including:

"(A)...enforceable emission limitations and other control measures, means, or techniques....as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;...

(C)...a program to provide for the enforcement of the measures described in (A), and the regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required under parts C and D [42 USC §§7470 et seq., 7501 et seq.];...

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this Act, a fee sufficient to cover:

- (i) the reasonable costs of reviewing and acting upon any application for such a permit, and
- (ii) ...the reasonable costs of implementing and enforcing the terms and conditions of any such permit...."

Wisconsin, like other states, has complied with these section 110 requirements by submitting administrative rules, state statutes and individual source-specific decisions relating to air quality matters and other required components of the implementation plan to EPA. In a segment of EPA's federal air regulations (40 CFR Part 52 – Subpart YY), there is a listing of Wisconsin's SIP submittals with an indication of which ones EPA has incorporated into Wisconsin's federally-approved SIP. While this section of the federal regulations is quite lengthy and appears to be comprehensive, it is not apparent or self-evident from reading the section what portions of the Department's submittals are approved as part of the federally approved SIP for Wisconsin. In fact, in the mid-1990's, EPA hired a contractor to determine what portions of Wisconsin's submittals were approved by EPA into Wisconsin's SIP. After over two years, the contract expired with no definitive conclusions. Wisconsin is not the only state with uncertainty over what rules are contained in their approved SIP. Many states are in a similar situation.

2003 Wisconsin Act 118 Section 231 Nonstatutory Report Provision

(2) REPORT ON CLEAN AIR ACT STATE IMPLEMENTATION PLANS. No later than the first day of the 13th month beginning after the effective date of this subsection (March 1, 2005), the department of natural resources shall submit to the standing committees of the legislature with jurisdiction over environmental matters a report that contains all of the following:

(a) A description of all of this state's existing and pending state implementation plans under 42 USC 7410 with an analysis of any rules or requirements included in the plans that may not have been necessary to obtain federal environmental protection agency approval but that are federally enforceable as a result of being included in the plan.

(b) Recommendations for priorities for revisions of state implementation plans to remove rules and other requirements that may not have been necessary to obtain federal environmental protection agency approval.

What Regulations are Included in Wisconsin's Approved SIP?

In response to the nonstatutory provision in 2003 Wisconsin Act 118, the Department has been reviewing its files and attempting to identify which portions of Wisconsin's air rules (chapters NR 400 – 499, Wis. Adm. Code) (**Appendix B**) EPA has incorporated into Wisconsin's federally-approved SIP. The table in



Appendix C of this report includes a listing of the chapters in the NR 400 series. The last column of the table indicates:

- whether that chapter is entirely incorporated into the federally-approved SIP for Wisconsin (“In”),
- whether portions, but not all, of the chapter have been incorporated into the federally-approved SIP (“Partial”);
- or whether it appears that the chapter may have been inadvertently incorporated into the SIP (“Questionable”).

This last category, “Questionable”, reflects the fact that in processing an administrative rule revision for partial inclusion in the SIP in 1999, EPA reported in the federal register [64 FR 28745, May 27, 1999] that it was approving certain chapters of the administrative code. As a result, several chapters were incorporated into the federally approved SIP that the Department did not intend to include.

What Approved Regulations are Not Required SIP Components?

After reviewing the Code of Federal Regulations listings for Wisconsin [40 CFR Part 52—Subpart YY] and the Department’s files on SIP submittals to EPA, the Department considered the “approved” SIP components in the context of the required SIP components in section 110 of the Clean Air Act [42 USC 7410]. In comparing the “approved” components of Wisconsin’s SIP with the required components of section 110 of the Clean Air Act, the Department identified a number of chapters of the air rules for which it may not have been necessary to obtain federal approval, but that are federally enforceable as a result of being included in the federally-approved plan. Those chapters include:

Chapter NR 409 – Acid Rain portion of operation permits
Chapter NR 411 – Construction and operation permits for Indirect Sources
Chapter NR 429 – Malodorous Emissions and Open Burning
Chapter NR 445 – Control of Hazardous Pollutants (State Emission Limits)
Chapter NR 447 – Control of Asbestos Emissions (NESHAPS)
Chapter NR 448 – Control of Beryllium Emissions (NESHAPS)
Chapter NR 449 – Control of Vinyl Chloride Emissions (NESHAPS)
Chapter NR 486 – Employee Commute Options program
Chapter NR 487 – Clean Fuel Fleet program
Chapter NR 488 – Refrigerant Recovery from salvaged or dismantled refrigeration equipment
Chapter NR 499 – Training and certification requirements for Solid Waste Treatment Facility Operators

Recommended Follow-up

The Department recommends that the chapters (identified above) which are not required to be part of the SIP be removed from the federally approved SIP. The Department must request that EPA withdraw the chapters. The Department proposes that these chapters be withdrawn from the federally approved SIP according to the following priority basis:

Priority I

Chapter NR 445 – Control of Hazardous Pollutants (State Emission Limits)
Chapter NR 447 – Control of Asbestos Emissions (NESHAPS)
Chapter NR 448 – Control of Beryllium Emissions (NESHAPS)
Chapter NR 449 – Control of Vinyl Chloride Emissions (NESHAPS)

Priority II

Chapter NR 486 – Employee Commute Options program
Chapter NR 487 – Clean Fuel Fleet program

Priority III

Chapter NR 409 – Acid Rain portion of operation permits
Chapter NR 411 – Construction and operation permits for Indirect Sources



Priority IV

Chapter NR 429 – Malodorous Emissions and Open Burning

Chapter NR 488 – Refrigerant Recovery from salvaged or dismantled refrigeration equipment

Chapter NR 499 – Training and certification requirements for Solid Waste Treatment Facility Operators

Pending Rule Revisions

In addition to existing rules mentioned above the Department is currently involved in rulemaking with respect to several revisions to the air rules (Chapters NR 400-499, Wisconsin Administrative Code). Some of the proposed rule revisions will be submitted to EPA as revisions to the federally approved SIP. The chart in **Appendix D** lists the rule revisions of the air rules that the Department is undertaking. A series of asterisks (***) in the first column of the chart (after the Natural Resources Board Order Number) indicates that the Department does **not** intend to submit the rule revisions to EPA for approval as revisions to Wisconsin's federally approved SIP.



EMISSION MONITORING PRACTICES

Background

Regulated facilities use emissions monitoring methods to demonstrate compliance with emission limits or work practice standards that are set in their permits. Methods to demonstrate compliance can be either direct or indirect. Direct methods include measuring pollutants using stack tests or continuous emissions monitoring systems. Indirect methods include measuring industrial process and/or control equipment parameters; calculating emissions based on emission factors or material safety data sheets; recordkeeping; or monitoring of work practices. Often, the compliance determination will use a combination of these methods, depending on the variability in emissions, the use of add-on controls, past compliance history, and the level of emissions as compared to the standard.

Sometimes the underlying standard containing the applicable limitation itself may specify monitoring requirements or test methods, such as Chapter NR 440, Wisconsin Administrative Code, or federal New Source Performance Standards. Chapter NR 439, Wisconsin Administrative Code, Reporting, Recordkeeping, Testing, Inspection and Determination of Compliance Requirements also states requirements for certain sources or source categories (**Appendix E**).

In accordance with s. 285.17(2)(b), Wisconsin Statutes, the Department informs permit applicants of their rights to review and to appeal the compliance monitoring requirements to the Air and Waste Division Administrator, either prior to, or during, the public comment period for their operating permit. Very few permit applicants have taken advantage of that option. Since this provision went into effect on February 6, 2004, only four permits out of 322 permit actions have been appealed. Most facilities prefer to resolve differences at the staff level.

Wisconsin Administrative Code requires facilities with operating permits to certify annually that they are in compliance with the requirements in their permit. Facilities use emissions monitoring data or other indirect monitoring data to support this certification.

2003 Wisconsin Act 118 Section 231 Nonstatutory Report Provision

(3) REPORT ON EMISSION MONITORING PRACTICES. The department of natural resources, in consultation with representatives of industry and others, shall develop a report that identifies best practices for emissions monitoring required under section 285.17 (2) of the statutes, as affected by this act, and related proposed rule revisions, to reduce overall permitting costs and approval times and to minimize inconsistencies in monitoring requirements within this state and with monitoring requirements imposed by other states and the federal environmental protection agency. The department shall submit the report under this subsection to the standing committees of the legislature with jurisdiction over environmental matters no later than the first day of the 13th month beginning after the effective date of this subsection (March 1, 2005).

Section 285.17(2), Wisconsin Statutes

- (a) The department may, by rule or in an operation permit, require the owner or operator of an air contaminant source to monitor the emissions of the air contaminant source or to monitor the ambient air in the vicinity of the air contaminant source and to report the results of the monitoring to the department. The department may specify methods for conducting the monitoring and for analyzing the results of the monitoring. The department shall require the owner or operator of a major source to report the results of any required monitoring of emissions from the major source to the department no less often than every 6 months.*
- (b) Before issuing an operation permit that contains a monitoring requirement relating to the emissions from an air contaminant source, the department shall notify the applicant of the proposed monitoring requirement and give the applicant the opportunity to demonstrate to the administrator of the division of the department that administers this chapter that the proposed monitoring requirement is unreasonable considering, among other factors, monitoring requirements imposed on similar air*



contaminant sources. If the administrator determines that the monitoring requirement is unreasonable, the department may not impose the monitoring requirement. If the administrator determines that the monitoring requirement is reasonable, the applicant may obtain a review of that determination by the secretary. The secretary may not delegate this function to another person. If the secretary determines that the monitoring requirement is unreasonable, the department may not impose the monitoring requirement.

Stakeholder Issues

Because the scope of monitoring requirements is extensive, the Department worked with industry representatives to identify and prioritize areas for evaluation and improvement. Issues of concern to regulated facilities and others were compiled from a review of previous stakeholder satisfaction surveys conducted by the Department in 2003 and 2004 and from the 2003 Legislative Audit of the air program. These issues were verified and clarified through additional discussions with industry representatives, EPA, and an environmental group. All stakeholders agreed that permit conditions must be written so that facilities, individuals, and agencies can quickly, easily, and adequately determine whether facilities are complying.

The Department also evaluated best practices from other states. In many cases, further research into best practices needs to be done. Because of the complexity of the issues, it often wasn't clear at the outset, which best practices to investigate. Because of the complexity of the air permit program and shrinking resources, many states have come up with best practices that focus decreasing staff resources on areas of greatest environmental risk. The recommendations that follow take into account the best practices from other states, and/or acknowledge the need to do additional research.

Initial Recommendations

Most of the recommendations involve developing guidance for staff and improving the guidance management system for the air management program. Stakeholders feel that the Department's current system of peer review and management approval of permits prior to issuance does not effectively prevent inappropriate compliance demonstration requirements from getting into permits. It is their feeling that many of these inappropriate requirements occur when administrative rules or program guidance do not provide clear direction.

Clear guidance and consistent implementation will be critical to assuring that stakeholder concerns are fully addressed. The Air Management Program will establish a management system that supports consistent application of program guidance and improved customer service. Training has already been provided to the statewide Air Management Team on change management and they have incorporated the practice of including outside speakers at team meetings. The Air Management Program has also solicited and followed professional advice from private sector management experts. In addition, an important component of the APII is a Management Workgroup that is evaluating further managerial improvements that can be made throughout the program. This group has already conducted a root cause analysis of why previous permit streamlining efforts were not fully successful. They will next identify program improvements to ensure that the recommendations of the APII are effectively implemented.

The Governor's proposed budget includes money to support a greatly improved information technology system. If this proposal is adopted in the final budget, the Air Management Program will be able to provide significantly improved service to customers including electronic permit applications. It will also provide integrated data from Air Management Program compliance, emissions inventory and permitting data management systems. This will assist air program managers in making timely, data driven decisions. It will also ensure consistency among compliance and permitting staff by allowing for an up-to-date electronic repository of program guidance and permit documents. It is the Department's vision for the improved system that all guidance documents are publicly accessible and kept current. These information technology improvements would assist program managers in delivering a significantly improved, accountable and well-balanced Air Management Program in Wisconsin.



The following seven areas were selected for initial evaluation because they were identified by more than one industrial sector, and because they all offered some possibilities for quick fixes. Many of the issue areas are the result of complexity at the federal level. Some of the issue areas are broad and have multiple issues within them, which may vary by industry sector. Recommendations for each of these areas are summarized in the following table. Details of each recommendation are provided following the table.

Recommendation Summary Table

Issue Area	Quick Fix	Further Work	Recommended Rule Changes
1. Rolling Averages	-Develop guidance cataloging requirements. -Establish standard permit language.	-Determine best practices for rolling averages at peaking plants. -Evaluate how to streamline multiple requirements that apply to a single unit.	Update NR 439, possibly other codes.
2. VOC Test Methods	-DNR & source collaborate on method selection during permit issuance/renewal. -Include only one test method in permit. -Develop permit language that enables change in test method by approval letter.	-Evaluate "default approval" provision for test method changes.	Update NR 439
3. Multiple or conflicting requirements	-Restructure Part II permit requirements. -Roll all construction and operation permit requirements into operation permit at time of issuance or renewal.	-Best practices research on streamlining multiple requirements.	Statute and rule changes to consolidate construction and operation permits
4. Control equipment operating parameters	-Consider alternatives to operating parameter limitations for compliance demo. - Include permit language that enables change in test method by approval letter.	-Evaluate "default approval" provision for operating parameter range changes. -Seek alternatives to operating parameter range limitations.	Update NR 439
5. Update ASTM test methods in NR 439		-Evaluate options for "quick fixes" in this area. -Update test methods, recognizing related federal requirements.	Update NR 439
6. Operating plan approvals	-Develop guidance cataloging plan submittal and approval requirements. -Develop standard permit language reflecting above guidance.	-Evaluate need for changes to NR 439, other codes. -Evaluate "default approval" provision for required submittals.	To be determined
7. Pollutants below level of quantification	-Develop guidance for inclusion of stack testing in permits. -Expand application of NR 445 guidance on this topic. -Require submittal of LOD/LOQ data with stack test results.		None

Issue 1: Rolling Averages

Rolling average calculations vary by pollutant and by regulatory requirement. Several of these requirements may apply to a single activity at a regulated facility (see Issue 3 below). In addition, some of these calculation methods have evolved over time. For all these reasons, it is confusing to Department staff and regulated facilities how to calculate these averages. The Department recommends the following:

- 1) Develop guidance that catalogs rolling average requirements, definitions, and compliance demonstration calculations by pollutant and regulatory requirement. Distribute the guidance to permit drafters and compliance staff, make it available to emission sources. (This guidance is currently under development.)
- 2) Establish standard permit language that reflects these requirements. Place the appropriate language into permits as they are issued or renewed.
- 3) Update Chapter NR 439, Wisconsin Administrative Code (and other rules as appropriate).
 - Determine best practices for calculating rolling averages at peaking plants.
 - Further evaluate best practices for streamlining multiple requirements for a single emission unit.

Issue 2: Test Method for Total Volatile Organic Compounds

EPA has approved a number of different test methods for measuring total volatile organic compounds. A test method that works for one industry may not be suitable for another due to differences in process. Some test methods measure only the total carbon. Other test methods measure the species of organic compound present and sum these species up to arrive at a total. Not all test methods have been approved at the federal level. For some industry sectors, the compounds present in the emission stream are known, and appropriate test methods are easy to select. In other sectors, where the compounds are less understood additional, more expensive testing may be recommended to help determine which compounds are present.

Currently the Department lists multiple, approved, compliance demonstration methods in permits to allow a facility flexibility in choosing the appropriate method. This also helps avoid the need to revise the permit if the facility wants to change methods. A source will typically select and routinely use only one of these methods, based on the specific processes, etc. at their facility. Listing only that method in the permit will clarify requirements for the source, the Department, and EPA. Flexibility can be maintained by including permit language that allows a change to another EPA method upon request from the source and approval by the Department. The Department recommends to:

- 1) Have the Department and the facility work together during permit issuance or renewal to select the test method to be used for compliance demonstration.
- 2) Write future permits to include only one test method that will be used by the facility to demonstrate compliance.
- 3) Develop permit language to enable the facility to request approval of a different test method via letter to the Department and to allow the Department to approve that request in writing.
- 4) Update Chapter NR 439, Wisconsin Administrative Code. Consider including a “default approval” provision if the Department does not take action on requested test method changes within a specific time, e.g. 15 days.



Issue 3: Multiple and/or Conflicting Requirements for a Single Regulated Activity

Compliance demonstration requirements across different regulations and permit requirements are sometimes inconsistent. Regulations include Chapter NR 439, Wisconsin Administrative Code, federal Acid Rain (Part 75), federal New Source Performance Standards, federal Maximum Achievable Control Technology Standards, Part II Permit Requirements, and “original” requirements developed by permit drafters. In addition, there may be conflicting requirements between construction and operation permits, especially where old construction permits with outdated requirements exist and/or new limits are not rolled into a single operating permit. This makes it difficult for the facility, Department staff, and the public, to understand what a facility must do to be in compliance. The Department recommends:

- 1) Develop a consolidated construction and operation permit program that will eliminate, to the extent possible, multiple requirements for a single activity at a single point in time. This will include changes to sections 285.60 through 285.69 Wisconsin Statutes and the revision and reorganization of Chapters NR 400 to 499, Wisconsin Administrative Code, to eliminate conflicting requirements.
- 2) Until that program is implemented, roll all current construction and operation permit requirements into a single operation permit at the time operation permits are issued or renewed. Revise or revoke outdated permit requirements at that time.
- 3) Restructure Part II general permit requirements to eliminate redundancies with Part I requirements and develop guidance for facilities and staff on how to certify compliance with permit requirements (currently under development).

Issue 4: Monitoring of Control Equipment Operating Parameters

In order for air pollution control technology to be effective, it must be operated within certain parameters. These parameters include things such as pressure drop ranges for baghouses, temperatures for incinerators, flow rate for scrubbers, etc. Chapter NR 439, Wisconsin Administrative Code, does not require these parameters to be in the permit, it only requires that they be monitored. On the other hand, Chapter NR 407, Wisconsin Administrative Code, does require that permits include sufficient monitoring for a source to demonstrate compliance with an emission limitation. Sometimes these parameters are the only practical means of determining compliance with a limit.

Facilities are required to specify in their permit application the parameters and ranges they will be monitoring. Sometimes it is difficult for facilities to know at the time of permit application the exact range of operating parameters that should apply to their facility. This may change over time as operational experience is gained. As permits are currently written, once a range is specified within a permit, that range cannot be changed without revising the permit. The Department recommends that:

- 1) During permit issuance or renewal, facilities propose and the Department consider alternative methods (other than monitoring of operating parameter ranges) to demonstrate compliance with emission limitations.
- 2) Develop permit language that enables the facility to write a letter to the Department to request approval of a different operating parameter range and that enables the Department to approve that request in writing.
- 3) Update Chapter NR 439, Wisconsin Administrative Code.
 - Evaluate inclusion of a “default approval” provision if the Department does not take action on requested operating parameter changes within a specific time e.g., 30 days.
 - Evaluate specifying additional compliance demonstration methods, in addition to (or other than) operating parameter ranges.



Issue 5: Modifying Chapter NR 439 to Keep Up To Date with ASTM Approved Test Methods

Permit language currently references Chapter NR 439, Wisconsin Administrative Code, test methods. Test methods evolve over time, and this chapter may not contain the most recent American Society of Testing and Materials (ASTM) methods. In addition, federal regulations may specify the ASTM methods that were current at the time the regulation was developed. When these regulations are written into state rules, the test methods specified in the federal regulations are included so as to not be more stringent (or different) than federal requirements. The end result is that it is often difficult for a facility to be able to use the most reliable test method for their situation. Because of the complexity in this issue, the Department recommends that:

- 1) Identify interim solutions and “quick fixes” through further evaluation in this area.
- 2) Update Chapter NR 439, Wisconsin Administrative Code.
 - Update test methods as appropriate. Take into account methods that must remain due to federal regulations.
- 3) Evaluate other methods for establishing operating parameters and operating ranges, such as inclusion in an approved malfunction prevention and abatement plan.

Issue 6: Timeliness of Operating Plan Approvals

There is inconsistency between permit language and compliance inspectors regarding the need for Department approval of malfunction prevention and abatement plans, emission control action plans, continuous emissions monitoring Quality Assurance/Quality Control (QA/QC) plans, and startup/shutdown malfunction plans. The Department recommends that:

- 1) Guidance be prepared that catalogs the types of plans sources are required to submit, which of those plans require approval based on federal regulations, and which of those plans should require approval based on environmental risk related to the equipment or operation covered in the plan.
- 2) Develop standard permit language and consistently use it based on this guidance.
- 3) Update Chapter NR 439, Wisconsin Administrative Code.
 - As part of this process, review existing plan submittal requirements and make any necessary changes concerning submittal and approval.
 - Evaluate inclusion of a “default approval” provision if the Department does not take action on required plan submittals within a specific time e.g. 30 days.

Issue 7: Monitoring for Pollutants Below Level of Detection (LOD) or Level of Quantification (LOQ)

Emission limits for particulate matter and hazardous air pollutants are sometimes so low that obtaining reliable compliance data becomes difficult. Stack testing methods may detect the pollutant but not be able to quantify the amount of the pollutant. Some test methods may be susceptible to erroneous results due to interference caused by sample constituents (for example, high sample moisture content may adversely affect some test methods). Sometimes to capture a sufficient quantity of a pollutant to reach measurable levels, tests must be run for extended time periods, or very large sample volumes must be collected. Both of these situations can result in significantly increased testing costs. The Department recommends that:

- 1) Develop guidance on when stack testing requirements should be included in permits (beyond where it is required by federal and state rules).



- 2) Evaluate existing guidance that was developed for this issue in relation to Chapter NR 445, Wisconsin Administrative Code for broader application in the Air Management Program (**Appendix F**). Revise guidance and distribute to permit and compliance staff.
- 3) Require a level of detection and level of quantification data to be included in stack testing results.

Additional Issues to be Evaluated

Additional improvements to emissions monitoring requirements will continue to be made over the course of the permit streamlining effort. The resolution of many of these issues requires a more systematic analysis of the entire permit system, including the structure and content of the underlying rules and statutes. These issues will be addressed as the design of the new consolidated permit system is developed over the course of the next nine months. These additional issues include, but are not limited to:

- Evaluate the extent that Wisconsin, as compared to other states, focuses on unlikely potential emission scenarios and insignificant emissions.
- Evaluate the degree to which compliance demonstration requirements can be moved away from the industrial process and towards the emission itself.
- Reduce monitoring and recordkeeping frequencies.
- Roll construction permit requirements into federal Title V operating permits and revoke or revise outdated requirements.
- Develop guidance and standardized permit language related to compliance assurance maintenance plans.
- Resolve additional test method issues and keep Chapter NR 439, Wisconsin Administrative Code, up-to-date.
- Develop instructions and forms to assist facilities with compliance certification.
- Develop clear rule and permit language so all interested parties understand what a facility needs to do to determine whether they are in compliance.
- Define the roles of permit drafters and compliance inspectors to assist facilities with determining the most reliable and reasonable compliance demonstration requirements.
- Develop the ability of employees to more effectively resolve disagreements over compliance demonstration requirements with the regulated community.
- Better integrate the air program's compliance, construction permit, and operation permit staff.
- Build an improved IT system in the Air Management Program to provide a common repository for permit documents and related program guidance.



PERMIT APPLICATION REQUIREMENTS

Background

Sections 285.61 and 285.62, Wisconsin Statutes, requires that sufficient information be provided to the Department for its use in determining whether an air pollution control permit may be granted for the construction, modification or operation of a stationary source. The Department has promulgated rules that describe the information that is necessary to make permitting decisions based upon federal regulations, guidance and policies. The application content requirements are provided within Chapters NR 405 and 407, Wisconsin Administrative Code.

Although general criteria for air permit applications is specified by rule, the Department needs source specific information to determine which air pollution requirements are necessary to be included in a specific air permit. To meet this need, the Department and EPA have developed standardized application forms and guidance materials to assist companies in the preparation of permit applications. Because of the unique nature of each permit application often times the Department requests additional information outside of those detailed in the generalized application forms and guidance materials. In fact, most applications require some additional information be submitted to assist the Department in making its permitting decision.

2003 Wisconsin Act 118 requires the Department to formally inform permit applicants of the completeness of their applications within distinct time frames. If the Department does not provide the applicant with notification that additional information is required, the application is considered to be complete and application review time periods begin running. In response to 2003 Wisconsin Act 118, the Department has made improvements to its application tracking systems and has enhanced its notification processes. The tracking system that is used for the permitting program has been modified to calculate time allotted by 2003 Wisconsin Act 118 for determining application completeness so that permit reviewers and their managers are made aware of upcoming time limits as they approach. Notifications to Air Program Managers of the receipt of a permit application are now performed electronically to improve the timeliness of permit review assignments.

Permit staff now send formal letters requesting additional information as well as notification of complete applications. Previously, if a limited amount of additional information was necessary to complete the review of a permit application, such requests for additional information may have been made by e-mail or telephone. While the practice of e-mail and telephone requests continues, a formal letter requesting the additional information follows these requests. This practice, in addition to meeting statutory requirements, helps to ensure that the file correctly identifies information requests and the subsequent effect on completeness determination time frames as well providing the permit applicant with a formal record of the request.

As was the case prior to 2003 Wisconsin Act 118, the Department continues to assist permit applicants with completing their requests for permits by responding to informal inquiries and participating in pre-application meetings. This practice greatly assists permit applicants in providing the Department with the information needed to complete its analysis and approval of the air permit.

2003 Wisconsin Act 118 provides the Department with the ability to grant permit approvals by way of general and registration permits. These types of permits are intended to streamline the permitting process significantly without sacrificing environmental protection. The Department is currently engaged in the rule drafting process to establish these programs and expects to be able to issue general and registration permits to facilities in the fall of 2005, assuming legislative review of the rules goes smoothly. Under the general and registration permit program, qualifying applicants will benefit from greatly simplified and industry specific application materials. Initial drafts of the registration permit template and permit application have been shared with external stakeholders and have received positive feedback (**Appendix G**).



2003 Wisconsin Act 118 Section 231 Nonstatutory Report Provision

(4) REPORT ON APPLICATION REQUIREMENTS. The department of natural resources, in consultation with representatives of industry and others, shall develop a report that identifies information that the department will require in applications for air pollution control permits, and related proposed rule revisions, to reduce overall permitting costs and approval times and to minimize inconsistencies in application requirements within this state and with application requirements imposed by other states and the federal environmental protection agency. The department shall submit the report under this subsection to the standing committees of the legislature with jurisdiction over environmental matters no later than the first day of the 13th month beginning after the effective date of this subsection (March 1, 2005).

Stakeholder Issues

Issues of concern to regulated facilities and others were compiled from a review of previous stakeholder satisfaction surveys conducted by the Department in 2003 and 2004 and from the 2003 Legislative Audit of the air program. Those concerns include:

- 1) Provide guidance to facilities on which forms need to be completed. Simplify the forms. Keep applicants informed of the status of their application throughout the process.
- 2) Reduce the level of detail of information required and only ask for information that is needed.
- 3) Define all information that is needed for a complete application. Reduce the need to request additional information.
- 4) Improve the tracking of applications and reduce the amount of information that gets "lost."
- 5) Reduce the elapsed time between receipt of application and issuance of the construction permit.
- 6) Develop applications specific to an industrial sector.
- 7) Streamline the negotiation process for reaching agreement on control technology, compliance demonstration methods, and emission rates.

Recommendations for Improvement

The Department is in the process of evaluating the entire application processes for permit issuance, renewal, and revisions or modifications under its Air Permit Improvement Initiative. The Department will consult further with stakeholders to identify and resolve permit application issues. Over the next nine months the Department will examine permit application requirements and determine ways to decrease the level of detail required, to clearly define what's needed, and develop improved procedures to negotiate outcomes in a more helpful way. This examination will be in conjunction with the development of a consolidated permit system.



APPENDICES

- A. Federal Clean Air Act – Part A Section 110 – State Implementation Plans
- B. Wisconsin Administrative Code Chapters Related to Air Pollution Control
- C. Review of the Wisconsin Administrative Code for State Implementation Plan Incorporation
- D. Pending Revisions to the Air Management Chapters of the Wisconsin Administrative Code
- E. Chapter NR 439 Wisconsin Administrative Code – Reporting, Testing, Inspection and Determination of Compliance Requirements
- F. Air Management Team Issue Brief – February 18, 2002 – Quantification Procedures and Policy
- G. Draft Registration Operation Permit Application and Permit Template
- H. Air Pollution Control Permit Basics
- I. Air Permit Glossary

